

Board of County Commissioners Agenda Request

Date of Meeting: June 8, 2004
Date Submitted: June 2, 2004

To: Honorable Chairman and Members of the Board

From: Herbert W.A. Thiele, Esq. 
County Attorney

Subject: Approval of Agreement and Release of Liability Granting
Permanent Custody to Home For Life, Inc., for the care of the dog
known as "Sailor"

Statement of Issue:

This item seeks the Board's approval of an Agreement and Release of Liability which would grant full and permanent custody of the dog known as "Sailor" to Home For Life, Inc., an animal sanctuary (Attachment #1).

Background:

In December, 2003, Carol Shirkey filed a Dangerous Dog Petition requesting to have the dog known as "Sailor" be declared a "dangerous" animal (Attachment #2). According to the Petition, Mrs. Shirkey's ten year old daughter, Emily was severely injured by Sailor, a border collie. Emily was treated for the injuries and received thirty (30) stitches to her right rear thigh at the Tallahassee Memorial Hospital. Thereafter, Leon County Animal Control conducted a thorough investigation of the attack and received complaints from several neighbors regarding Sailor (Attachment #3). Primarily, the neighbors complained of the dog "being neglected by the owner, kept outside in freezing weather, barking and running at joggers and walkers, he is constantly tied to chain, kids tease the dog and throw sticks at it, and the dog has been observed fighting area wildlife." While the residents in the neighborhood are afraid for their safety, they also expressed concern for the dog's well-being. At the time of the incident, the owner of the dog, Murray Sharkey, allowed the dog to remain chained to a "make-shift" shelter on a vacant lot.

After conducting its investigation, Animal Control presented the case to the Leon County Animal Control Classification Committee (Committee) for review. During a publicly-noticed "pre-determination" hearing on January 30, 2004, and after reviewing the investigative report, the Committee voted to classify Sailor as a "dangerous" dog and ordered the final disposition of "permanent confinement" (Attachment #4). Animal Control notified Murray Sharkey of the pre-determination decision and his opportunity to attend the Final Determination hearing scheduled for February 26, 2004. The Committee entered the "dangerous" classification at the duly noticed public hearing on February 26, 2004 and further ordered the Final Disposition of Permanent Confinement (Attachment #5).

Leon County Animal Control consistently notified Murray Sharkey of the time set for public hearings and that his dog, "Sailor" had been declared "dangerous". However, Mr. Sharkey never responded to such notices, nor did he attend any of the duly noticed public hearings to speak or protest the classification until Leon County notified him that his dog would be euthanized. In response, Mr. Sharkey filed an appeal in the county court to contest the "dangerous dog" classification (Attachment #6). The County Attorney's office, filed a Motion to dismiss asserting that the appeal was untimely (Attachment #7). After a hearing on the matter, County Court Judge Augustus Aikens granted the Motion and dismissed the appeal on April 27, 2004 (Attachment #8).

Mr. Sharkey had thirty (30) days to appeal the Judge's ruling to the Circuit Court on or before May 26, 2004. To date, Mr. Sharkey has not complied with the County's requirements for Permanent Confinement and has not filed an appeal. Therefore, Mr. Sharkey has "abandoned" Sailor. While this case has been pending, Sailor has been held at the City of Tallahassee/Leon County Animal Shelter since January of this year. Lisa Laverdiere of Home For Life, Inc., in the State of Wisconsin has volunteered to take full and permanent custody of Sailor to prevent euthanasia of the animal.

Analysis:

Section 4-91 of the Leon County Code of Laws, prohibits the adoption of any animal that has been classified as a dangerous animal. The policy behind this law serves to protect the County from liability suits should the animal attack someone in the future. Accordingly, Animal Control is required to euthanize Sailor, since he was abandoned by his owner. However, Home For Life, Inc. has volunteered to take full and permanent possession of Sailor. Home For Life, Inc. is a non-profit organization whose primary mission is to take in unadoptable animals, caring for them in an animal sanctuary for life. Lisa Laverdiere, as Chief Executive Officer of the organization, has executed the attached Agreement and Release of Liability and is waiting on the Board's approval so she can travel to Florida to take possession of the dog. The Agreement and Release of Liability serves some critically important goals, such as helping protect the County from liability suits and requiring Home For Life, Inc. to comply with the County's requirements for permanent confinement.

Options:

1. Approve the Agreement and Release of Liability granting full and permanent custody of the dog known as "Sailor" to Home For Life, Inc., an animal sanctuary.
2. Do not approve the Agreement and Release of Liability.
3. Board direction.

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Attachment # 2

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Recommendation:

Option # 1.

Attachments:

1. Agreement & Release of Liability
2. Dangerous Dog Petition
3. Investigation & Incident Report
4. Animal Petition Review
5. Final Determination
6. Notice of Appeal
7. Motion to Dismiss
8. Order of Dismissal

HWAT/CAS/cc

AGREEMENT AND
RELEASE OF LIABILITY

This Agreement is made and entered into this 10th day of June, 2004, by and between LEON COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, hereinafter referred to as the "County," and HOME FOR LIFE, a non-profit corporation, located at 375 Highway 65, Star Prairie, Wisconsin, 54001, hereinafter referred to as the "Corporation."

WHEREAS, on February 26, 2004, the Leon County Animal Classification Committee classified the dog known as "Sailor" as a "dangerous" dog and ordered the disposition of "permanent confinement"; and

WHEREAS, the dog's owner, Murray Sharkey, contested the "dangerous" classification in County Court, and the said classification remains unchanged after the County Court dismissed the action on April 27, 2004; and

WHEREAS, Murray Sharkey has failed to comply with the requirements of the *Leon County Code of Laws* for permanent confinement, and further has abandoned the dog known as "Sailor"; and

WHEREAS, once a dog has been declared "dangerous" by the Leon County Animal Classification Committee, said dog is unadoptable pursuant to Section 4-91 of the *Leon County Code of Laws* and will be euthanized if not claimed by the owner who is required to comply with the County's requirements for permanent confinement; and

WHEREAS, the Corporation, which is a non-profit corporation, located in Stillwater, Minnesota, operates a sanctuary for animals who are unadoptable and has volunteered to care for "Sailor" during the entirety of his life;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth, the parties do hereby agree as follows:

1. The Corporation shall permanently confine Sailor in a secure enclosure as set forth in Section 4-100 of the *Leon County Code of Laws*.
2. Prior to taking physical possession of Sailor, the Corporation agrees to the following:
 - a. to obtain a permit from the Leon County Division of Animal Control to harbor Sailor.
 - b. to affix upon Sailor the tag which will accompany the permit, this tag shall be worn by Sailor at all times.
 - c. to apply the terms of Section 4-99 of the *Leon County Code of Laws* to Sailor, which requires the tattooing of the permit number upon the inner rear thigh of Sailor.
 - d. to have Sailor neutered by a licensed veterinarian
3. The Corporation agrees that anytime Sailor is outside of the secure enclosure he must be leashed and muzzled, and the muzzle shall be properly fitted so to prevent Sailor from biting humans or other animals.
4. The Corporation agrees to provide permanent medical care, food, shelter and overall companionship to Sailor for the entirety of his life.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on this 7 day of June, 2004.

LEON COUNTY, FLORIDA

By: Jane G. Sauls, Vice Chairman
Jane G. Sauls, Chairman
Board of County Commissioners

HOME FOR LIFE, INC.

By: Lisa Laverdiere, Esq.
Lisa Laverdiere, Esq.
Chief Executive Officer



ATTESTED BY:
BOB INZER, CLERK OF THE COURT

By: [Signature]

ATTESTED BY:

By: [Signature]
Secretary of the Corporation

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: [Signature]
Herbert W.A. Thiele, Esq.
County Attorney

GENERAL RELEASE OF LIABILITY

HOME FOR LIFE, INC., as the "Corporation," acknowledges that it has voluntarily applied to take full and permanent possession of Sailor, a dangerous dog. The Corporation is aware that Sailor was declared "dangerous" because he severely injured a small child without provocation. The Corporation, therefore, voluntarily takes possession of Sailor with the knowledge of the potential danger involved and the Corporation assumes any and all risks of injury, death, or property damage.

The Corporation, for and in consideration of the privilege and benefits to be derived from the right to take full and permanent possession of Sailor, does hereby release and forever discharge, absolve, and hold harmless Leon County, Florida, its officers, agents and employees from any and all liability, claim, or action that the Corporation or its officers, agents, employees, successors, heirs, assigns, administrators, or executors, may ever have resulting directly or indirectly or remotely from any injury, death or property damage occurring as a result of the Corporation taking possession of Sailor, a dangerous dog.

The Corporation further agrees to indemnify and hold harmless Leon County, Florida, its officers, agents, and employees, from and against any and all claims, liabilities, damages, or suits of any nature whatsoever arising out of, because of, or due to the Corporation taking possession of Sailor, a dangerous dog, including but not limited to costs and a reasonable attorney's fee. In suits, claims or causes of action brought against Leon County, Florida, the County may, at its sole option, defend itself or allow another to provide the defense, and the Corporation agrees to reimburse Leon County for any expenses related thereto.

The Corporation further states and affirms that it has personally read and understands this document, and that the Corporation has not relied upon any statements, promises, or advice of

any employees or agents of Leon County, and that the Corporation understands that it has the right to have an attorney review same and does hereby voluntarily affix its signature hereto this

7 day of June, 2004.

HOME FOR LIFE, INC.

By: _____

[Signature]
Lisa Laverdiere, Esq.
Chief Executive Officer

ATTESTED BY:

[Signature]

Secretary of the Corporation

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this 7th day of June, 2004, by Lisa Laverdiere, Esq., Chief Executive Officer, and [Signature], as Secretary of the Corporation, a Minnesota (enter State) corporation, on behalf of the corporation.

Personally known to me ☒

OR Produced Identification _____

Type of Identification Produced _____

[Signature]

Notary Public -- Signature

Print, Type or Stamp Name of Notary

SEAN L. SMITH 1/31/2005

My Commission Expires:

